STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ALIYAH LASHAWN MERIWEATHER and OWEN MALIK KEY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ATIBA MERIWEATHER,

Respondent-Appellant.

UNPUBLISHED
June 3, 2010

No. 294292
Wayne Circuit Court
Family Division
LC No. 01-402390

Before: WHITBECK, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g), (h), (i), and (j). We affirm.

Respondent first agues that the trial court erroneously asserted jurisdiction over the children. We disagree. A trial court's jurisdiction over a child is derived from statutory and constitutional law. *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992). "On appeal, our inquiry is whether the error alleged was of such magnitude that, but for it, there was an insufficient basis for the probate court to assume jurisdiction." *Id*. We review a trial court's factual findings concerning jurisdiction for clear error. See, generally, *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004), and *In re SR*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

A court cannot terminate a parent's parental rights unless the court has jurisdiction under MCL 712A.2(b). *In re SR*, 229 Mich App at 314. "To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2[.]" *In re SR*, 229 Mich App at 314. In relevant part, section 2(b) provides for jurisdiction over:

> [A] juvenile under 18 years of age found within the county:
>
> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary

> for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .
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> * * *
>
> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

The record provides numerous reasons supporting the assumption of jurisdiction over the children. The record shows that the children were subject to a substantial risk of harm to their mental well-being by virtue of respondent's physically and sexually abusive conduct. Evidence was presented that respondent physically abused children in his care, and he was previously convicted of fourth-degree child abuse. He also sexually assaulted the children's half-sibling, resulting in five criminal sexual conduct convictions and a 25-year minimum prison sentence. Although no evidence showed that respondent sexually assaulted the children at issue here, the principle of anticipatory neglect or abuse can (and here did) provide an appropriate basis for invoking the court's jurisdiction. *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005), superceded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163-164; 774 NW2d 698 (2009). "A child may come within the jurisdiction of the court solely on the basis of a parent's treatment of another child. Abuse or neglect of the second child is not a prerequisite for jurisdiction of that child and application of the doctrine of anticipatory neglect." *Id*.

Further, although a parent's criminal status alone may be insufficient for a court's assumption of jurisdiction, a parent's acts against children in his care can be directly related to their mental well-being and his ability to care for them. See *In re SR*, 229 Mich App at 316. Here, respondent had a history of physically abusing and sexually assaulting children in his care, and the caseworker opined that respondent presented a danger to the children's safety and well-being if he were to be released from prison. Accordingly, jurisdiction was proper under § 2(b)(1). To the extent that the trial court erred by relying on other bases for jurisdiction not demonstrated by the evidence, any error was harmless. This Court will not reverse when the trial court reaches the correct result for the wrong reason. *In re Hamlet*, 225 Mich App 505, 523 n 2; 571 NW2d 750 (1997), overruled in part on other grounds by *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

Respondent next argues that the trial court erred by denying his demand that the case be heard by a judge. We disagree. We review this issue for an abuse of discretion. See, generally, *In re Hubel*, 148 Mich App 696, 697; 384 NW2d 849 (1986). An abuse of discretion exists when the trial court selects an outcome outside the range of reasonable and principled outcomes. *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008).

MCR 3.912(B) provides:

> **Right; Demand.** The parties have the right to a judge at a hearing on the formal calendar. A party may demand that a judge rather than a referee preside at a nonjury trial by filing a written demand with the court within:

(1) 14 days after the court gives notice of the right to a judge, or

(2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial.

The court may excuse a late filing in the interest of justice.

The record shows that on April 2, 2009, the referee informed respondent of his right to proceed before a judge, and, after consulting with his attorney, respondent chose to proceed before the referee. Thereafter, on June 23, 2009, he filed a judge demand pursuant to MCR 3.912. The adjudication hearing had already been scheduled for July 8, 2009. The trial court denied the judge demand and ordered that the case be heard before the referee.

Notwithstanding that respondent initially elected to proceed before the referee, he did not file his judge demand within 14 days after being informed of his right to proceed before a judge as required under MCR 3.912(B)(1). Rather, he waited more than two months to file his judge demand. In addition, respondent filed his judge demand within 21 days of the July 8, 2009, trial date, contrary to MCR 3.912(B)(2). Thus, the judge demand was untimely pursuant to MCR 3.912(B). See, e.g., *In re Hubel*, 148 Mich App at 699-700 (respondent parents waived their rights to a jury trial by failing to file a timely written jury demand).

Although MCR 3.912(B) provides that a "court may excuse a late filing in the interest of justice," respondent does not adequately argue how the interests of justice required excusing his late filing in this case; respondent merely refers to "confusing paperwork" and states that the "trial court *nearly* denied [him] any type of trial . . ." (emphasis added). Moreover, respondent fails to demonstrate how the trial court's denial of his judge demand constituted an abuse of discretion. Thus, the trial court did not abuse its discretion by denying respondent's untimely judge demand.

Respondent next argues that the trial court erred by determining that the statutory bases on which the court relied warranted termination of his parental rights. We disagree. The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(K); *In re BZ*, 264 Mich App at 296. Respondent fathered at least six children and was not providing care for any of them at the time of the adjudication. He was convicted of five counts of criminal sexual conduct involving his daughter "TM"[1] and was serving a 25-year minimum prison sentence. Thus, he will not be able to provide for his children within a reasonable time. Respondent had a history of physically abusing the children in his care and was previously convicted of fourth-degree child abuse. Because of respondent's previous physical and sexual abuse of children, he posed a serious risk of harm to the children if he were to be released from prison and the children were placed in his care.

[1] We note that Aliyah occasionally stayed overnight at TM's home where TM lived with her mother and the mother of some of respondent's other children. Respondent had sometimes been present when Aliyah visited the home.

Further, respondent's parental rights to two of his children were previously terminated because of his sexual abuse involving TM. He was also provided services with respect to the 2001 removal of the children in his home. He sporadically attended individual counseling sessions and refused all other services. He was uninvolved in the proceedings and did not attend court hearings. The trial court returned the children to the care of respondent's wife after she obtained a personal protection order against respondent and directed her not to allow respondent any unsupervised contact with Aliyah. Thus, prior attempts to rehabilitate respondent were unsuccessful. Moreover, contrary to respondent's argument, he was not entitled to services to reunite him with the children because he was convicted of first-degree criminal sexual conduct involving TM. MCL 712A.19a(2); MCL 722.638; *In re Rood*, 483 Mich 73, 118; 763 NW2d 587 (2009). Accordingly, that trial court did not clearly err by finding that clear and convincing evidence supported termination under §§ 19b(3)(g), (h), (i), and (j).

Further, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357. No evidence was presented that showed a positive, healthy relationship between respondent and the children. Rather, the evidence showed only that respondent physically and sexually abused the children in his care and had a violent relationship with his wife. Moreover, respondent will be imprisoned beyond the time that the children reach age 18, and, if he were released from prison during the children's minority, he would pose a serious risk to their safety and well-being. Accordingly, the trial court did not clearly err by finding that termination was in the children's best interests. See, e.g., *In re Jenks*, 281 Mich App 514, 519; 760 NW2d 297 (2008).

Affirmed.

/s/ William C. Whitbeck
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood